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Subject: FW: EOIR Case Law Bulletin (Week of Aug. 21, 2017)
Date: Wednesday, August 30, 2017 9:58:44 AM
Attachments: [image001.png](#)
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**EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**

Case Law Bulletin

Week of August 21, 2017

[In Focus](#)

Third Circuit

- [Romero Zambrano v. Sessions](#), No. 16-4254, 2017 WL 3598059 (3d Cir. Aug. 22, 2017) (unpublished) (ACF; CAT) The Third Circuit granted the PFR in part, concluding that “petitioner provide[d] evidence independent of . . . her credibility to corroborate [her] claim,” and the IJ’s “adverse credibility determination alone [was] insufficient to defeat [her] CAT claim.”
- [Mendoza-Ordonez v. Att’y Gen. of United States](#), No. 16-3333, 2017 WL 3611991 (3d Cir. Aug. 23, 2017) (WOR; UAUW) The Third Circuit reversed the BIA’s decision and granted the PFR for withholding of removal, concluding that substantial evidence compels findings that the Honduran government was unwilling or unable to protect petitioner from death threats and that petitioner could not safely relocate within Honduras.
- [Mohamed v. Att’y Gen. of United States](#), Nos. 16-1435, 16-3180, 2017 WL 3635521 (3d Cir. Aug. 24, 2017) (unpublished) (MTR) The Third Circuit granted the PFR in part and remanded to the BIA to provide a more complete review of petitioner’s motion to reopen and to reconsider whether to exercise its discretion to reopen the proceedings. The court concluded that the BIA erred in its analysis of petitioner’s motion to reopen by issuing a “ cursory ” opinion that “frustrates [the court’s] ability to reach any conclusion on this issue.”

Sixth Circuit

- [Carrillo Santos v. Sessions](#), No. 16-4730 (6th Cir. Aug. 22, 2017) (unpublished) (Domestic Violence; UAUW) (unavailable on West) The Sixth Circuit granted the PFR, concluding that the record compels the conclusion that the Guatemalan government would have been unwilling or unable to protect petitioner from her abuser.

Eighth Circuit

- [Patel v. Sessions](#), No. 16-3619, 2017 WL 3594166 (8th Cir. Aug. 22, 2017) (Waiver–216(c)(4)) The Eighth Circuit granted the PFR, concluding that the Board abused its discretion in finding petitioner ineligible to adjust status for failure to establish the bona fides of her prior marriage and denying her motion to remand, concluding that although the IJ had sustained the charge of removability based on section 212(a)(6)(C)(i) “the instant proceedings established only that [petitioner] failed to meet her burden to prove that her marriage . . . was entered into in good faith for the purposes of a hardship waiver—a question that is separate from any finding of fraud.”
- [United States v. Mata](#), No. 16-1709, 2017 WL 3666685 (8th Cir. Aug. 25, 2017) (ACCA-COV) The Eighth Circuit affirmed the sentencing enhancement of the district court, concluding that Minn. Stat. Ann. § 609.344(1)(c)(2004) (third degree criminal sexual conduct) constitutes a crime of violence under the elements clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)), and that the district court did not err in applying the modified categorical approach to find that petitioner’s conviction necessarily involved the use of force.

Ninth Circuit

- [Marinelarena v. Sessions](#), No. 14-720003, 2017 WL 3611589 (9th Cir. Aug. 23, 2017) (BOP; inconclusive record of conviction) The Ninth Circuit denied the PFR in part, concluding that petitioner’s statute of conviction, Cal. Penal Code § 182(a)(1) (conspiring to sell and transport a controlled substance) is overbroad but divisible, and, after applying the modified categorical approach, concluded that the record of conviction was inconclusive as to whether the overt act in furtherance of the target offense related to a federally controlled substance. The Ninth Circuit concluded that its decision in *Young v. Holder*, 697 F.3d 976 (9th Cir. 2012) (en banc), in which it held that a “petitioner cannot carry the burden of demonstrating eligibility for cancellation of removal by establishing an inconclusive record of

[Stepanyan v. Sessions](#), No. 14-71891, 2017 WL 3669447 (9th Cir. Aug. 25, 2017) (unpublished) (CAT)

conviction,” remained good law and was not abrogated by the Supreme Court’s decision in *Moncrieffe v. Holder*, 569 U.S. 184 (2013). The Ninth Circuit vacated in part and remanded the CAT claim for further review, concluding that the BIA did not consider all evidence bearing on petitioner’s CAT claim.

[United States v. Robinson](#), No. 16-30096, 2017 WL 3648524 (9th Cir. Aug. 25, 2017) (USSG-COV)

The Ninth Circuit vacated the district court’s sentence, concluding that Wash. Rev. Code. § 9A.36.021 (second degree assault) does not constitute a crime of violence under USSG § 2K2.1 (“crime of violence” given the same meaning as USSG § 4B1.2(a) which is the same as 18 USC § 16) because it is overbroad and indivisible.

Eleventh Circuit

[United States v. Vail-Bailon](#), No. 15-10351, 2017 WL 3667647 (11th Cir. Aug. 25, 2017) (USSG-COV)

On rehearing en banc, the Eleventh Circuit affirmed the sentencing enhancement of the district court, concluding that Fla. Stat. Ann. § 784.041 (felony battery) constitutes a crime of violence under the elements clause of USSG § 2L1.2(b)(1)(A)(ii) (same as 18 U.S.C. § 16(a)).